

1
2
3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 LONNIE T. HAWKINS,

Case No. 3:24-cv-00330-MMD-CSD

7 Plaintiff,

ORDER

8 v.

9 WASHOE COUNTY, *et al.*,

10 Defendants.

11 *Pro se* Plaintiff Lonnie T. Hawkins, a pretrial detainee at the Washoe County
12 Detention Facility ("WCDF") filed an application to proceed *in forma pauperis* ("IFP
13 Application") and Complaint alleging police officers used excessive force on him and his
14 constitutional rights were otherwise violated when he was arrested and then booked into
15 WCDF. (ECF Nos. 1, 1-1, 4.) Before the Court is the Report and Recommendation
16 ("R&R") of United States Magistrate Judge Craig S. Denney (ECF No. 5), recommending
17 the Court grant Hawkins' IFP Application, permit him to proceed on one claim, and grant
18 him leave to amend as to some other claims. To date, no objections to the R&R have
19 been filed. Because there is no objection, and as further explained below, the Court will
20 adopt the R&R.

21 Because there is no objection, the Court need not conduct *de novo* review, and is
22 satisfied that Judge Weksler did not clearly err. *See United States v. Reyna-Tapia*, 328
23 F.3d 1114, 1116 (9th Cir. 2003) ("De novo review of the magistrate judges' findings and
24 recommendations is required if, but *only* if, one or both parties file objections to the
25 findings and recommendations." (emphasis in original)). As mentioned, Judge Denney
26 first recommends the Court grant Hawkins' IFP Application. (ECF No. 5 at 1-3.) Judge
27 Denney next recommends Washoe County be dismissed as a defendant but with leave
28 to amend because Hawkins did not allege that any county policy led to any violation of

1 his Constitutional rights. (*Id.* at 6-7.) Judge Denney next recommends Hawkins' excessive
2 force claim regarding his arrest be dismissed with leave to amend to allege facts regarding
3 each defendant's role in the use of excessive force. (*Id.* at 7-8.) Judge Denney then
4 recommends Hawkins' false arrest claim be dismissed with leave to amend for insufficient
5 factual allegations, subject to the further caveat that it may not be a legally viable claim.
6 (*Id.* at 8-9.) Judge Denney similarly recommends that Hawkins' failure to secure
7 exculpatory evidence claim be dismissed with leave to amend because he did not allege
8 the who, what, or how of that claim. (*Id.* at 10-11.) Judge Denney next recommends
9 Hawkins' failure to read him his *Miranda* rights claim be dismissed with prejudice because
10 that does not necessarily constitute a violation of his Fifth Amendment rights. (*Id.* at 11.)
11 Judge Denney goes on to recommend dismissal of Hawkins' claim based on the mere
12 fact that DNA was collected from him via a cheek swab with leave to amend but
13 recommends that his claim for excessive force while performing the cheek swab should
14 proceed. (*Id.* at 11-12.) Judge Denney finally recommends that Hawkins' equal protection
15 claim based on discrimination be dismissed with leave to amend, again for insufficient
16 factual allegations. Having reviewed the R&R, Judge Denney did not clearly err.

17 It is therefore ordered that Judge Denney's Report and Recommendation (ECF
18 No. 5) is accepted and adopted in full.

19 It is further ordered that Hawkins' IFP application (ECF No. 1) is granted.

20 It is further ordered that, within 30 days, Hawkins must pay an initial partial filing
21 fee in the amount of \$9.62. Thereafter, whenever the amount in his inmate account
22 exceeds \$10, he is required to make monthly payments in the amount of 20 percent of
23 the preceding month's income credited to his account until the full \$350 filing fee is paid.
24 This is required even if this case is dismissed or is otherwise unsuccessful.

25 The Clerk of Court is directed to send a copy of this order to the attention of Chief
26 of Inmate Services for the Washoe County Detention Facility at 911 E. Parr Blvd., Reno,
27 NV 89512.

28 ///

1 It is further ordered that Hawkins' redundant, second IFP Application (ECF No. 4)
2 is denied as moot.

3 The Clerk of Court is further directed to file a copy of the Complaint (ECF No. 1-
4 1).

5 It is further ordered that Hawkins may proceed on his Fourteenth Amendment
6 excessive force claim against the Doe DNA collectors and/or deputies once Plaintiff
7 learns their identities and seeks to substitute or amend to name them in accordance with
8 the Federal Rules of Civil Procedure, Local Rules, and any applicable scheduling order
9 deadlines.

10 It is further ordered that Hawkins' claim based on the allegation he was not
11 Mirandized before or after his arrest is dismissed with prejudice.


12 It is further ordered that Hawkins' remaining claims are dismissed with leave to
13 amend consistent with Judge Denney's analysis in the R&R.

14 The Clerk of Court is further directed to send Hawkins instructions for filing a civil
15 rights complaint by an incarcerated individual and form civil rights complaint by an inmate.

16 It is further ordered that Hawkins must file any amended complaint consistent with
17 this order and correcting the deficiencies identified in the R&R within 30 days. The
18 amended complaint must be complete in and of itself without referring to or incorporating
19 by reference any previous complaint. Any allegations, parties, or requests for relief from
20 a prior complaint that are not carried forward in the amended complaint will no longer be
21 before the Court. Hawkins must also check the box for the first amended complaint on
22 the Court's form civil rights complaint.

23 It is further ordered that, if Plaintiff fails to file an amended complaint within 30
24 days, this case will proceed only against the Doe defendants on the Fourteenth
25 Amendment excessive force claim regarding the forceful cheek swab.

26 DATED THIS 12th Day of November 2024.

27
28 
MIRANDA M. DU
UNITED STATES DISTRICT JUDGE